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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/599,679	06/22/00	BROCKWAY	TERUO-3A

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PM92/0213

EXAMINER
STORMER, R

ART UNIT	PAPER NUMBER
3617	

DATE MAILED: 02/13/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

599679

Applicant(s)

R.S. BROCKWAY

Examiner

R STORMER

Group Art Unit

3017

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 1-20 is/are allowed.
- ☒ Claim(s) 21-23 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 3617

***Reissue Applications***

1. This reissue application was filed without the required offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, **must** be received before this reissue application can be allowed. See 37 CFR 1.178.

***Claim Rejections - 35 USC § 112***

2. Claims 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is indefinite because the "compaction cleat" in line 10 is inferentially claimed. Any structure which makes up the invention must be positively claimed. The claimed compaction cleat in line 10 is not positively set forth and therefore it is not clear if the cleat is being claimed as part of the invention, or where the cleat would be disposed on the wheel. Further, it is not clear if this compaction cleat is the same as those set forth in line 6 of the same claim, thereby making it indefinite as to what Applicant is attempting to claim.

In claim 23, the preamble sets forth a compaction machine, yet the claim depends from claim 21 which only claims a compactor wheel. Claim 23 is indefinite because it is not clear

Art Unit: 3617

whether Applicant intends to claim the compactor wheel, the compactor, or the combination of the two subcombinations.

3. Claims 21-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the parent application was filed, had possession of the claimed invention.

If the term "a compaction cleat" in line 10 of claim 21 is interpreted as intended by the statements made in paragraphs 6 and 7 of the Reissue Oath filed September 21, 2000, then the limitation is considered to be new matter because the disclosure of the parent application does not disclose or even suggest that the width of cleat-free area of the rim can be measured against anything other than the cleats 28 which are secured to the wheel rim.

The specification of the originally filed parent application makes it clear that the cleat-free area is obtained by removing the inner-most row of cleats 36, or by locating this row farther outward and extending the rim inward. See the last twelve lines of page 10 and all of page 11 of the specification of parent application 08/732901 and/or lines 13-60 of column 6 of the parent patent 5,769,507. Nowhere in the originally filed specification of the parent application is there any suggestion that the cleat-free area can be have at least the width of "any compaction cleat, not just the width of the compaction cleats mounted to the face of the rim" as stated in paragraph 6 of the reissue oath.


Art Unit: 3617

*Allowable Subject Matter*

4. Claims 1-20 are allowable over the prior art of record.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (703) 308-1113.

rds

February 9, 2001

  
RUSSELL D. STORMER  
PRIMARY EXAMINER 2/9/01